

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 426 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

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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?

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HEIR OF NAI PUNJA RAMCHAND

Versus

CHAMANLAL MOHANLAL PANCHAL

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Appearance:

MR MC BAROT for Appellants

MR DK PANDYA for Respondent No. 1

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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 30/11/98

ORAL JUDGEMENT (Per Patel, J.)

Being aggrieved by an order dated 29.8.1984 passed by learned Single Judge in Civil Application No. 2592 of 1984, the appellants have preferred this appeal.

2. The First Appeal filed by the appellants was

delayed by 146 days; hence an application for condonation of delay was filed. Learned Single Judge rejected the application for condonation of delay as also appeal on merits as no case was made out.

3. The facts that emerges from the record are as under:-

3.1 Land bearing survey No. 76 admeasuring 7 Acres 16 Gunthas of village Vasda, Taluka Deesa was acquired by the Dantiwada Agricultural University and compensation was determined under sec. 11 of the Land Acquisition Act (hereinafter referred to as the Act). The respondents herein moved the Land Acquisition Officer on 20th March 1978 on the basis of a sale deed dated 15.1.1972 interalia claiming that he is entitled to get the amount of compensation. The respondent pleaded that he and Nathu Godad Rabari of Ranpur village purchased the land under acquisition from Nai Punja Raichand on 15.1.1972 for a consideration of Rs.1500/- by a registered sale deed. The Court, exercising powers under section 30 of the Act held that the present respondent is entitled to receive the compensation awarded by Special Land Acquisition Officer by an order dated 12th April 1983. It is against this order that the First Appeal came to be preferred. The same being delayed, an application for condonation of delay was filed, and the order rejecting the said application is under challenge in this LPA. Learned Single Judge on merits of the case came to the conclusion that no case is made out.

4. Mr. Barot, learned advocate appearing for the appellant contended that there was sufficient evidence before the Court deciding the dispute under section 30 of the Act to the effect that the sale deed in question is in violation of section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Tenancy Act), and, therefore, even if it is believed that the agreement was executed, no title would pass in favour of a vendee. He further submitted that the respondent not being an agriculturist, could not have entered into an agreement with the predecessor in title of the land in question, viz: Nai Punja Raichand. He further submitted that the trial Court ought to have considered the revenue entries for deciding the dispute as to the person to whom the amount is payable. He submitted that entries made on the basis of the sale deed have been subsequently cancelled by the Deputy Collector and the same was confirmed by the Collector.

5. We have carefully gone through the judgment of

the learned Single Judge and we find no merits in the submissions made by the learned advocate for the appellants before us.

6. It would be first necessary to decide as to the forum entitled to decide the dispute. When a dispute as to the title of the land acquired under the Act as well as the persons entitled to compensation arises, the Land Acquisition Officer has to determine the extent of land, the persons entitled to compensation and the compensation to be determined under sec. 23 (1) of the Act. If he finds that there is any dispute as to the person entitled to receive the compensation, necessarily he has to deposit the amount under Section 31 of the Act into the Court to which Reference would lie. In the case of A.L. TEMPLE SINGIRIGUDI VS. UNION OF INDIA & ORS. reported in JT 1996 (8) SC 432, the Apex Court pointed out that on the dispute having been raised, Land Acquisition Officer has to make a Reference to the Court under section 30 of the Act to decide the dispute between the competing persons who set up rival title to the compensation. The Apex Court observed as under in the aforesaid case :-

"Under those circumstances, the only legal course open is that a direction be issued to the Land Acquisition Officer to make a reference under Section 30 to decide the inter se title to receive the compensation either by the appellant or by the 4th respondent, as the case may be, and the reference Court would decide the matter in accordance with law."

7. In the instant case, in the light of the aforesaid, we have to say that under section 30 of the Act, the Court to which the matter is referred has to decide the person to whom the amount is payable.

8. Our attention is drawn to section 63 of the Tenancy Act, which pertains to restriction on transfer of agricultural lands to non-agriculturists. Reading the same it appears that transfer of lands to a person who is not an agriculturist is barred. Section 84C of the Tenancy Act refers to disposal of land, transfer or acquisition of which is invalid. Mr. Barot submitted that in view of section 84.C. it is for the Mamlatdar to hold an inquiry and if he comes to the conclusion that the transfer or acquisition of the land is invalid, then he is required to make an order declaring the transfer or acquisition to be invalid unless the parties to such transfer or acquisition give an undertaking in writing that within a period of three months from such date as

the Mamlatdar may fix, they shall restore the land along with the rights and interest therein to the position in which it was immediately before the transfer or acquisition and the land is so restored within that period. Sub-section (3) of Section 84.C provides that the land shall be deemed to vest in the State Government free from all encumbrances lawfully subsisting thereon on the date of such vesting and shall be disposed of in the manner provided in sub-section (4). After inquiry a declaration can be made by Mamlatdar under sub-section 2 of Sec. 84.C to the effect that the transfer or acquisition of land is invalid. The trial Court has pointed out that no proceedings under section 84.C of the Tenancy Act were initiated before the Mamlatdar. Neither Nai Punja Raichand moved the Mamlatdar soon after or within a reasonable period, nor any action was initiated by Mamlatdar of his own. The trial Court, on evidence also found that the respondent is a son of an Agriculturist. It is an admitted position that the land acquired was agricultural land. It is pointed out by the trial Court that son of an Agriculturist is an Agriculturist. Considering the word "agriculturist" and "to cultivate personally" which include cultivation by member of a family, coupled with the fact that respondent's mother was agriculturist, the trial Court has committed no mistake in coming to the conclusion that the respondent is an agriculturist. Further, trial Court considered Exhs. 33 and 34 and other documentary evidence and came to the conclusion that the respondent's mother is also an agriculturist. Thus, in view of the evidence placed on record, it cannot be said that the respondent is not an 'agriculturist'. The trial Court, on appreciation of evidence held that the respondent was an agriculturist; not only that, but co-owner was admittedly an agriculturist. Therefore, the sale deed cannot be said to be invalid or illegal or against the provisions of section 63 of the Tenancy Act.

9. The trial Court was of the view that "in view of the specific admission secured from the mouth of Gamaben at Exh. 53 and in view of the fact that there is ample evidence on record that the present applicant together with another co-purchaser were agriculturists and therefore, the said sale deed is legal and valid and the ownership rights passed from Punja Ramchand to the present applicant and on the date of notification u/s. 4 of the Act, the present applicant was the owner of the suit land ... "

10. There are concurrent findings of facts, Mr. Barot could not point out any other material to indicate

that the order requires any interference. Hence the  
appeal stands dismissed. No order as to costs.  
csm./ -----