

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3097 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

- =====
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

MOHANBHAI H PADHIYAR

Versus

COMPETENT AUTHORITY AND ADDL. COLLECTOR U.L.C.

Appearance:

MR MC BHATT for Petitioners

MR DP JOSHI, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 30/06/98

ORAL JUDGEMENT

Rule. In the facts and circumstances of the case, with consent of the learned counsel for the parties the matter is taken up for final disposal today.

2. This petition under Article 226 of the Constitution challenges the vires of Rule 11 of the Urban Land (Ceiling and Regulation) Rules, 1976 as beyond the scope of rule making power conferred on the Central Government under Section 46 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as

"the Act") and also as violative of Articles 14, 19 and 21 of the Constitution. The petitioners also challenge the order dated 25.3.1998 passed by the Competent Authority, Vadodara holding that the declaration made by the petitioners under Section 21(1) of the Act was time barred.

3. In the view that this Court proposes to take it is not necessary to set out all the facts in detail. The petitioners hold land to the extent of 4797 Sq.Mtrs. in the Vadodara Urban Agglomeration. The petitioners had made the declaration in form No. 5 prescribed under Section 21 of the Act. That declaration was made on 26.7.1993 after the Town Planning Scheme covering the lands in question was finalized. By order dated 27.10.1993, the Competent Authority held that the declaration made by the petitioners on 26.7.1993 was within the period prescribed by Rule 11 of the Rules and the papers were accordingly ordered to be forwarded to the specified authority being the technical officer of the Roads & Building Department. It is the case of the petitioners that the aforesaid order passed by the Competent Authority in favour of the petitioners on 27.10.1993 has been reviewed and revoked by the Competent Authority on 25.3.1998 (Annexure "D") without any authority of law and without giving the petitioners any opportunity of being heard. The learned counsel for the petitioner also wanted to make submissions on the question of vires of Rule 11.

4. On the other hand, Mr DP Joshi, learned AGP has submitted that Rule 11 is intra vires and that on facts the Competent Authority was justified in passing the impugned order. However, the learned AGP did not dispute the fact that the impugned order was passed without giving the petitioners any opportunity of being heard.

5. Having heard the learned counsel for the parties, it appears to the Court that without going into the larger question regarding vires of Rule 11 of the Rules, which is kept open, this petition is required to be disposed of on the ground that the impugned order dated 25.3.1998 (Annexure "D" to the petition) was passed by the Competent Authority without giving the petitioners any show case notice or any opportunity of being heard. The order dated 27.10.1993 (Annexure "C") passed by the Competent Authority was obviously in favour of the petitioners and the said order has been revoked by the Competent Authority on 25.3.1998 without giving any show cause notice or any opportunity of being heard to the petitioners. In view of this breach of principle of

natural justice, the impugned order dated 25.3.1998 is required to be quashed and set aside.

6. This Court has not gone into the merits of the contentions of the parties including the question whether the Competent Authority had the power to review which contention is raised on behalf of the petitioners, but is not being decided. It will be open to the petitioners to raise all contentions available to them before the Competent Authority in case the competent authority issues any notice for revocation or cancellation of the order dated 27.10.1993. This Court is not to be treated as having expressed any opinion either way.

7. The impugned order dated 25.3.1998 (Annexure "D" to the petition) is quashed and set aside on the ground that the said order was passed in violation of the principle of natural justice. In case the respondents issue any show cause notice to the petitioners for cancellation of the order dated 27.10.1993, it will be open to the petitioners to urge all contentions available to them and after giving the petitioners an opportunity of being heard, the respondents shall decide the matter in accordance with law.

8. The petition is accordingly disposed of in terms of the aforesaid directions. Rule is made absolute to the aforesaid extent only with no order as to costs.

June 30, 1998 (M. S. Shah, J.)