

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4163 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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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?

BHIKHABHAI MOHANBHAI RAMANI

Versus

STATE OF GUJARAT

Appearance:

MR KG VAKHARIA with Mr. M.K. VAKHARIA & Mr. Tushar Mehta for Petitioners

MR A.J. DESAI, ASSTT. GOVERNMENT PLEADER for Respondent No. 1

MR BJ JADEJA for Respondent No. 3, 4, 5, 6

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 30/04/99

ORAL JUDGEMENT

1. The petitioners seek to challenge the order of the Collector dated 23.3.1984 at Annexure "E" to the petition and the order of the Government dated 10.12.1984 confirming it as also the order dated 24.6.1986 said to have been passed by the Revenue Minister, which orders

had the effect of denying the petitioners the benefit of the alleged grant of lands, which according to them were allotted to them in the year 1963 and the Sanads for which were given to them for occupancy in years 1974 to 1976.

2. It is the case of the petitioners that all of them were residing in village Devchadi, which went in submergence due to the construction of Bhadar Irrigation Dam. Since the entire village went in submergence, all the residents including the petitioners were required to shift the new site known as village New Devchadi. The residents of the old village were given plots for constructing their houses in the new village. According to the petitioners, there were instances where plots were allotted irrespective of the actual measurement of the area of land held by the persons who resided in the old village. Furthermore, even those who did not have residential houses in the old village were rehabilitated at the new site. The allotment letters were issued by Circle Inspector in year 1963 as per Annexure "A" collectively, in favour of the petitioners and thereafter, between the years 1974 to 1976, agreements/sanads in form "H" were also issued in their favour as per Annexure "B" collectively.

3. The Collector, Rajkot had issued an order on 27.5.1974, a copy of which is at annexure "D" to the petition, for allotment of lands to the persons who had to be shifted to the new sites due to the submergence of the old Devchadi village. According to the petitioners, they were given these sites in consonance with the said decision of the Collector. It is their case that they were given the site at the price fixed pursuant to that order.

4. It appears that an application was made by the respondents Nos. 3 to 6, because of some political rivalry as alleged by the petitioners, asking the Collector to cancel the allotments which were made in favour of the petitioners. That application came to be dismissed by the Deputy Collector, Rajkot. Against that order, Special Civil Application No. 2659 of 1982 was filed by these respondents and by order dated 29th September, 1982, the High Court directed the Collector, Rajkot to decide the matter on merits. Thereafter, the matter came to be considered by the Deputy Collector, Gondal, who, after taking in to consideration the earlier orders of the Collector, Rajkot dated 27.5.1974, held his order dated 29.8.1983 that since it was not proved that the lands were given to the petitioners in lieu of their

lands in the old village which went in to submergence, they should be treated as having encroached the land and that such encroachment was required to be regularised. That order came to be challenged under Section 211 of the Bombay Land Revenue Code, before the Collector, Rajkot, who allowed the Revision Application by his order dated 23.3.1984 and set aside the order of the Deputy Collector. The Collector held that the petitioners' ancestors were having lands in the village Devchadi that went in to submergence and compensation was paid in respect thereof, and lands were allotted to them at the place where they were rehabilitated for the purpose of their re-settlement, at concessional rate. Therefore, the petitioners were not entitled to any other land and the Sanads were wrongly issued to them. Against that order, the petitioners preferred a Revision Application under Section 211 of the Land Revenue Code before the State Government, in which the order of the Collector came to be confirmed on 10.12.1984. In that order, the State Government held that the persons whose lands went under submergence, were entitled to get the plots at the new site and such persons were given the benefit of the Scheme. It was held that in other cases, the plots could not have been given except by public auction. It was held that the lands could not have been given to the petitioners at the rate of 25 paise per square yard as was done by the allotments made between 1974 - 1976. It was also held that there were no orders of the Competent Authority for issuing such grants under Rule 42 of the Gujarat Land Revenue Rules.

5. It was contended on behalf of the petitioners that the State Government failed to consider the fact that the petitioners were eligible for such allotment in view of the orders of the Collector made on 27.5.1974. It was argued that not only the persons whose lands went in to submergence, but even persons who did not have the land of their own but were residing in the village and had to be shifted, were also entitled to the allotment of plots. It was contended that three distinct categories which were contemplated in the Collector's order enabled even encroachers to be regularised in view of their having remained in possession of the land for a long period after they shifted from the old village to the new site. It was also argued that the State Government ignored the fact that Rojkam regarding the market price was made and accordingly the occupancy price was fixed at 25 paise per sq.yard, since the market price was not higher than that upset price. It was further argued that even the respondents were given the benefit of the Collector's order and they too were allotted lands at the

same price.

6. The learned Counsel appearing for the respondents Nos. 3 to 6 contended that these petitioners were not eligible to get the lands and that there were no orders of grant made in their favour pursuant to which the documents Annexure "B" collectively could have been executed under Rule 42 of the Rules. It was argued that this Court should not interfere in its extra-ordinary powers with the concurrent orders of the Collector and the State Government holding that the allotments in favour of the petitioners were invalid.

7. There is no dispute about the fact that the petitioners were residents of old village Devchadi, which went in to submergence and that they came to be allotted certain sites in the year 1963 which remained in their possession till they were issued the orders, which are at Annexure "B" collectively, between years 1974 - 1976. It is also not in dispute that the residents of the old village which went in to submergence were to be rehabilitated at the new site and that the order was issued by the Collector on 27.5.1974, which is at Annexure "D" to the petition, directing the Mamlatdar, Gondal to decide the allotment of lands to various categories of persons as per the guidelines given therein.

8. Section 62 of the Bombay Land Revenue Code empowers the Collector, subject to the Rules made by the State Government, to require the payment of a price for unalienated land or to sell the same by auction and to annex such conditions to the grant as he may deem fit, before permission to occupy is given under Section 60. Section 60 of the Code lays down that any person desirous of taking up unoccupied land which has not been alienated must, previously to entering upon occupation, obtain the permission in writing of the Mamlatdar of Mahalkari. Under Rule 42 of the Gujarat Land Revenue Rules, 1972, it has been provided that unoccupied land required or suitable for building sites or other non-agricultural purpose shall ordinarily be sold after being laid out in suitable plots by auction to the highest bidder whenever the Collector is of the opinion that there is a demand for land for any such purpose; but the Collector may, in his discretion, dispose of such land by private arrangement, either upon payment of a price fixed by him or without charge, as he deems fit. It is thus, clear that in a given case, the Collector, is empowered to allot land without putting it to public auction. The persons who were affected by the submergence of village

Devchadi were required to be rehabilitated at the new site, which was chosen for the purpose and therefore, in view of these peculiar facts, there was no question of holding any public auction and it was a mere matter of rehabilitation of those who were adversely affected and in that background, the Collector, Rajkot had issued the directions to the Mamlatdar, Gondal on 27.5.1974 laying down the guidelines for resettling three different categories of persons who came to be affected by the submergence of village Devchadi. These were, firstly, those who were having lands in the old village which went in submergence and were allotted lands at the new site in lieu of their earlier lands. A direction was given regarding converting those holdings which were given on new tenure into old tenure and making necessary changes in the respective sanads. It was held that the occupancy price should be 25 paise per sq. yard or the market price on the date on which the possession was handed over, whichever is higher. The second category was of persons who had some land in the earlier village but at the new site they were in possession of a larger area of land. In respect of this category also, a direction was issued that their occupancy was to be regularised by charging the occupancy price as indicated in respect of first category. It was further stated that the persons who had lands in the earlier village and were allotted land at the new site, but were also holding land in the new site which included the land purchased from any allottee of land, then instead of treating it as a breach of conditions of the new tenure, the occupancy in respect of such additional land is to be regularised by charging additional occupancy price. Thereafter, there is a reference to the category where persons who were not having any land in the old village which went in to submergence but were in possession of land at the new site, which was not purchased by them from any person who had lands in the earlier village nor was it held under any sanction of the Competent Authority and therefore were encroachers, and it was provided that their holdings were required to be regularised on new tenure basis having regard to their longstanding possession, by charging market price. The Collector directed the Mamlatdar, Gondal to immediately regularise the cases as per these guidelines and send his report to the Collector.

9. It is thus evident from the orders of the Collector dated 27.5.1974 that even persons who did not have any land in the village that went in submergence, but who were in possession of lands at the new site as encroachers, were to be given the benefit of regularising

their occupancy on new tenure basis by charging market price as mentioned earlier in that order. Even in case of those who had some land in the earlier village and were allotted site in lieu thereof at the new village, if they were found to be in possession of additional land, that was also required to be regularised. It appears that the State Government has totally missed this aspect of the matter and has not carefully considered the guidelines which were given by the Collector on 27.5.1974, while deciding the Revision Application against the petitioners. It also appears from the order of the Deputy Collector dated 29th August, 1983 which came to be set aside by the Collector, that some Rojkam was made on 17.6.1974 for fixing the market price of the land and as per that Rojkam, the occupancy price was required to be fixed at 25 paise per square yard. This also seems to have been over-looked by the State Government in deciding the Revision Application.

10. Since the material aspects have not been duly considered, the decision of the State Government cannot be sustained and a direction will have to be given to the State Government to reconsider the Revision Application in the light of the orders of the Collector dated 27.5.1974, as also the Rojkam dated 17.6.1974. The impugned order of the State Government dated 10.12.1984 at Annexure "F" to the petition is therefore, set aside with a direction to the State Government to reconsider the Revision Application afresh in light of the observations made in this judgement and take an appropriate decision in the matter in accordance with law expeditiously, preferably within two months from the date of receipt of the writ of this order. Rule is made absolute accordingly with no order as to costs.

*/Mohandas