

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4768 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

- =====
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?
-

BHALCHANDRA PRABHASHANKER PANDYA

Versus

COLLECTOR

Appearance:

MR HASIT DILIP DAVE for Petitioner
MR BY MANKAD, AGP for Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH
Date of decision: 29/01/99

ORAL JUDGEMENT

By means of this petition, the petitioner has sought for quashing the impugned order dated 19-2-90 of the Collector, Baroda as well as the impugned order dated 9-4-1990 of the Addl. Secretary, Revenue Department

(Appeals), Gujarat State, passed in Appeal No.SRD/BAKHAPA/VADAD/7/90 , Annexure-B.

2 Final plot no. 610 was carved out of Survey No. 1136 of village Gorwa Tal. Vadodara. In that village town planning scheme has been introduced. The land in dispute was in the name of Balchandra Prabhashanker Pandya and others and they sold some portion of this land to Parvatinagar Coop. Housing Society on 2-4-1983 for nonagricultural purpose. The land purchased by Parvatinagar Coop. Housing Society has already been converted into nonagricultural use. But for a small piece of the disputed land admeasuring 381 sq. mtr. belonging to the petitioner no permission was taken from the Collector for nonagricultural use. The Collector, Vadodara issued a notice and held the use to be illegal under Section 66 of the Bombay Land Revenue Code, 1879 and ordered for eviction by the order dated 19-2-1990. That order was confirmed in the appeal without giving any opportunity of hearing to the petitioner. Hence, this petition has been filed.

3. Learned counsel for the petitioner contended that the Collector in this case has initiated the action after inordinate delay of 14 years and the Collector has regularized the construction of Parvatinagar Coop. Housing Society and the Collector should have regularized the construction on the adjoining land of the petitioner. He has also submitted that the petitioner has applied u/s 65 of the Bombay Land Revenue Code, 1879 before the Collector seeking N.A. permission and that application was not decided by the Collector and the notice as stated above was issued to the petitioner and the order for eviction was passed.

4. It was also pointed out by the learned counsel for the petitioner that in the impugned order of the Government the wrong fact has been mentioned that the petitioner has not taken the permission from the local authority. The learned counsel for the petitioner further pointed that the petitioner has obtained necessary certificate dated 6-11-1989 from other concerned authority under the provisions of the Bombay Municipal Corporations Act. The petitioner has also obtained necessary certificate on 22-2-1997 from the Vadodara Urban Development Authority. The submission of the learned counsel for the petitioner is that even the land in dispute has been used for nonagricultural purpose without any permission and hence the action should be taken u/s 67 of the Bombay Land Revenue Code, 1879. The Collector may grant such permission on such terms and

conditions as may be prescribed and the land can be used for any other purpose without the permission of the Collector on payment of tax as specified in the corresponding entries in Columns No. 3, 4 and 5 of Section 67-A of the Act. The Collector has filed an affidavit-in-reply in this case, wherein it is stated that he has deputed the Mamlatdar to file affidavit-in-reply in this case and the Mamlatdar has also filed an affidavit-in-reply and in para 4 thereof it is stated that even today if the petitioner applies u/s 67 of the Bombay Tenancy and Agricultural Lands Act for regularization of the unauthorized construction on the disputed land and to obtain necessary permission, the concerned authority will consider the same as per the Rules and Regulations. It was pointed out by the learned counsel for the petitioner it has been wrongly mentioned Section 67 of the Bombay Tenancy and Agricultural Lands Act. In place of that, Section 67 of the Bombay Land Revenue Code should have been mentioned. From the averments, it appears that the intention of the Mamlatdar in making assertion is that if the petitioner applies before the Collector or before the appropriate authority for regularization of the unauthorized construction and obtain necessary certificate, the authority will consider the same as per the Rules and Regulations and appropriate order can be passed for regularization of the unauthorized construction.

5. Without going into other aspects of the case, I think that it would be proper to direct the petitioner to file a copy of the application which he has already filed before the Collector u/s 65 of the Bombay Land Revenue Code, 1879, along with a certified copy of this order to the authority concerned and the authority concerned will decide the matter sympathetically and in accordance with the provisions of the Bombay Land Revenue Code, 1879.

6. Accordingly, this petition is allowed and the impugned orders Annexure - A and Annexure - B to the petition are hereby quashed and set aside and the petitioner is directed to file a certified copy of this order along with the copy of the application made by him u/s 67-A of the Bombay Land Revenue Code, 1879 to the Collector, within a month and if such an application along with a certified copy of this order is filed by the petitioner, the concerned authority will consider the matter in accordance with the provisions of Section 67-A of the Bombay Land Revenue Code, 1879 within a period of two months thereafter. Accordingly, rule is made absolute to the aforesaid extent, with no order as to costs. Interim order, if any, stands vacated.

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/JVSatwara/