

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2155 of 1992

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
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? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SULEMAN HASMA GHANCHI THROUGH HERIS AND LEAL REPRES

Versus

STATE OF GUJARAT

Appearance:

Mr.JR Nanavati, advocate for the petitioner no.1

Mrs.Manisha Lavkumar, AGP for respondents

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision:20/10/2000

C.A.V. JUDGEMENT

#. The petitioners as agriculturists made application to the Assistant Collector, Junagadh for grant of lands to them adjoining to their existing lands. The Assistant Collector, Junagadh passed an order on 21-10-1981 and granted adjoining lands being Survey No. 118/3 and bearing Survey No. 120/3 admeasuring 12 gunthas and another adjoining land of Vokla Kharaba variety of 30

gunthas. On actual measurement of land, the total area of the land granted was found to be 1 acre 8 gunthas. In addition to the above, land admeasuring 26 gunthas of Survey No. 118/1 was also granted to the petitioners. The price of the land was fixed at Rs. 59,000/- per acre. A total amount of Rs. 70,800/- was paid by the petitioners on the orders of the Assistant Collector. The lands were granted for agricultural purpose.

#. After grant of the land, the petitioners applied for permission to use the lands for non-agricultural purposes. The permission for non-agricultural use was granted on 8-2-1982 by the District Panchayat, Junagadh. The petitioners have thereafter sold the lands to Cooperative Societies for constructing residential houses. Presently the land is under use of the Cooperative Societies, which have erected houses in which several families are residing.

#. The Collector, Junagadh issued a show cause notice dated 8-4-1987 to the petitioners calling upon them to explain why for use of the land for non-agricultural purposes the order of the Assistant Collector granting the land on 21-10-1981 be not recalled. The petitioners submitted a reply to the show cause notice and pointed out that a valid non-agricultural permission was obtained before putting the land to use for non-agricultural purpose. The Collector however on 18-9-1987 held that the land granted for agricultural use was illegally diverted for non-agricultural purposes and the order of the Assistant Collector, therefore, deserves to be revised in exercise of revisional powers. The Collector, accordingly, passed an order on 18-9-1987.

#. The petitioners then carried the matter in revision to the State Government. The State Government allowed the revision on 18-4-1988, but, after setting aside the order of the Collector, directed to make enquiry with regard to the nature and character of the lands and whether any rights and title have been created in respect of the lands in favour of others.

#. On remand of the matter, the Collector again by order dated 12-3-1990 held that the valuation of the land was wrongly made and instead of recovering a sum of Rs.70,800/-, a sum of Rs. 1,21,400/- should have been recovered as price of the land. The petitioners were directed to pay the balance of Rs. 50,600/-. The Collector passed the order, terming it as a notice on 12-3-1990, and directed recovery of the balance amount of price of the land.

#. Aggrieved by the order of the Collector dated 12-3-1990, the petitioners again approached, by way of a Revision Application, to the State Government. The Revision was allowed. The State Government again remanded the matter to the Collector to re-determine the value of the land after giving due opportunity of hearing to the petitioners.

#. On remand of the matter to the Collector again the order was passed on 30-10-1991 confirming the demand in the sum of Rs.50,600/- as additional price of premium payable for the land granted to the petitioners.

#. Aggrieved by the last order dated 30-10-1991 passed by the Collector, the petitioners, for the third time, approached the State Government in revision. The State Government by its order dated 4-1-1991/12-2-1992 dismissed the Revision preferred by the petitioners and confirmed the order of the Collector.

#. Learned counsel appearing for the petitioners contend that the order of the Assistant Collector dated 21-10-1981 granting agricultural land on premium fixed is an order of contractual nature, which is binding on the parties and has attained finality. The second order of the Collector passed on 21-10-1981 could not have been interfered with in exercise of revisional powers under the Bombay Land Revenue Code. On behalf of the petitioners it is next contended that the order of allotment of the land made on payment of premium in the year 1981 could not have been revised in proceedings taken after such a long period in the year 1987 by issuance of notice on 8-4-1987. Learned counsel submits that after allotment of land for agricultural purpose, the petitioners obtained a valid permission for putting it to non-agricultural use. The land was also sold and is now under the use of the members of the Cooperative Societies as houses have been built upon them. The impugned orders, therefore, directing recovery of a sum of Rs. 50,600/as additional premium/price of the land and on failure thereof to resume the lands is an action per se illegal, arbitrary and unwarranted by the provisions of the Bombay Land Revenue Code.

##. Before considering the merits of the contentions advanced on behalf of the petitioners and the State, a brief survey of the relevant provisions of the Bombay Land Revenue Code which regulate the grant of land and fixation of price of premium needs to be made.

##. Unoccupied land can be granted by the Collector on payment of a price to be determined in accordance with the Rules framed under Section 62 of the Bombay Land Revenue Code. Rule 37 of the Bombay Land Revenue Rules, 1972 framed under the Code, empowers the Collector to grant any unoccupied land for agricultural purposes on payment of a fixed price. Such grant is to be made on terms contained in an agreement to be executed in prescribed Form "F". The relevant condition contained in the prescribed Form "F" under which unoccupied land is to be granted requires that the land so granted shall not be transferred without previous sanction of the State Government or the competent authority. Where the land granted for agricultural purposes is proposed to be used for non-agricultural purposes, the occupant has to apply for such permission for conversion of the use of the land and shall be required to pay conservation tax in accordance with the provisions contained in Section 67A of the Code. Where the land granted by the State is proposed to be transferred, the occupant has to seek previous sanction of the State Government and such sanction shall not be granted as required by Sections 73-B of the Code, except on payment of such sum as the State Government may by general or specific order determine.

##. The only other provision which deserves to be noticed is the extraordinary power of revision conferred on the State Government and specified Revenue Officers under Section 211 of the Code. The extraordinary power of revision conferred on State Government and higher revenue authorities over the proceedings of the lower revenue authorities is not restricted by any specific period of limitation, but by series of decisions of this Court and of the Supreme Court, it has been held that the power of revision under Section 211 has to be exercised within a reasonable time and depending upon the facts and circumstances of the case, such reasonable period, in the absence of any extraordinary circumstances, may be taken to be one year. (See (i) State of Gujarat Vs. Raghavnath 1969 GLR 992 (S.C.), (ii) Janardhan D. Patel Vs. State of Gujarat 1997(1) GLR 50, (iii) Chhotalal Madhavbhai Vs. State of Gujarat 1995(1) GLH 890, (iv) Champaklal Vs. State of Gujarat 1996(2) GLH U.J. 35 and (v) Brig. M.C. Gadwal Vs. State of Gujarat 1993(2) GLR 1736.

##. After hearing the learned counsel appearing for the parties and on perusal of the last two impugned orders passed by Collector, Junagadh dated 30-10-1991 and of the Addl. Chief Secretary, Revenue Department of Government

of Gujarat dated 4-1-1992, I have come to the conclusion that the petition deserves to succeed on the sole ground that the action taken by way of Suo Motu Revision under Section 211 of the Bombay Land Revenue Code is inordinately delayed creating an irretrievable situation against the petitioner and the members of the Cooperative Housing Society, who are living in the residential houses built on the land. The land was granted to the petitioners on premium fixed for its use for agricultural purposes on 21-10-1981. The action under Section 211 of the Bombay Land Revenue Code alleging variation of the conditions of grant of land was initiated after more than a period of six years by show cause notice dated 8-4-1987. In the intervening period, with due permission obtained from the authorities, the use of the land was diverted for non-agricultural purposes. It was given for construction of residential houses to Cooperative Society and the residential houses have now been built. The land now is owned by the Cooperative Society. After such a long period of time it is neither legal nor equitable to demand from the petitioners the higher premium for the land by amending the condition of the initial grant. The Addl. Chief Secretary of the Revenue Department in his impugned order states that the advocate appearing for the petitioner was asked to agree for payment of more amount of premium for use of the land for construction of houses. It has been recorded in the order that the counsel for the petitioner had showed his unwillingness, therefore, the grant be withdrawn and the possession of the land be taken. Such an order passed after a period of more than six years is not warranted by the provisions of Section 211 which confers Suo Motu powers of revision to be exercised within a reasonable period. By a series of decisions of this Court which have been upheld by the Supreme Court, it has been held that the provisions of Section 211 of the Code do not prescribe any period of limitation but the power should be exercised within a reasonable period of time and the reasonable period must be determined according to facts and circumstances of the case and the nature of the order proposed to be passed. In one of the cases reasonable period is taken to be not more than one year. (See decision of this Court in Bhagwanji Patel v. State of Gujarat AIR 1971 GUJ 64 and Brig. M.C.Gadwal (supra)). (See also decisions of Supreme Court in Rajul Cooperative Housing Society vs. State of Gujarat AIR 1969 SC 1297 and State of Orissa v. Brundavan Sharma 1995 Supp (3) SCC 249).

##. Applying the test of reasonable period, the period of more than six years in the instant case cannot be held to be reasonable. In the initial grant of the land,

there was no condition incorporated that if the land was got diverted for non-agricultural use, additional premium would be charged. After grant of land on the conditions specified in the grant, the petitioners obtained N.A. permission, sold the land to the Cooperative Housing Society and Cooperative Housing Society has already built houses on the land for its use. The land was sold by registered sale deed. It was a public notice to all including the authorities. If any action was contemplated under Section 211, the same should have been taken within a reasonable time after the land was put to non-agricultural use. The petitioner is no longer owner of the land and after six years to amend the condition of the grant and demand from him higher amount of premium is an action which cannot be supported. There are inordinate delays and laches on the part of the authorities.

##. For the aforesaid reasons, it is not necessary for me to go into the other grounds urged by the learned counsel on behalf of the petitioners to assail the legality of the impugned action of the revenue authorities.

As a result, the petition succeeds and is hereby allowed. The impugned order dated 30-10-1991 of Collector, Junagadh (Annexure G) and the order dated 4-1-1992/12-2-1992 passed by Addl. Chief Secretary, Revenue Department, Government of Gujarat (Annexure H) are hereby quashed. Rule is made absolute.

In the circumstances, however, I leave the parties to bear their own costs.

(D.M.Dharmadhikari, C.J.)

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