

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8633 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 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

PANCHOLI K HIMATLAL

Versus

STATE OF GUJARAT

Appearance:

MR JITENDRA M PATEL for Petitioners
GOVERNMENT PLEADER for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 30/06/2000

ORAL JUDGEMENT

#. The petitioners above named have preferred this petition under Article 227 of the Constitution of India. By this petition, they have challenged the order passed by the Additional Chief Secretary (Appeals), Revenue

Department, Government of Gujarat dated 28th November, 1988 in revision application filed by the present petitioners under which, the said revision application was dismissed by the said authority.

#. The facts may be briefly stated as under.

#. The petitioners abovenamed purchased an agricultural land admeasuring about 4 gunthas by registered sale deed dated 18th May, 1978. The said land was bearing Survey No.283 /5 B. The petitioners had paid the amount of consideration of Rs.2,000/- to the second respondent. The petitioners claim that the land in question is adjoining to Gamtal land and it was purchased for the purpose of residence. That the petitioners have also constructed residential structure in the said land since 1978.

#. The petitioners have also contended the Collector initiated proceedings under Section 9 of the Bombay Prevention of Fragmentation and Consolidation of Holding Act, 1988 [hereinafter referred to as the 'said Act']. That notice was served upon the petitioners and the petitioners appeared before the Collector and contended that the proceedings could not be initiated after lapse of very long time. They also contended that the petitioners were residing in the said land after constructing residential house on the said land. That despite said position, the Deputy Collector by order dated 16th July, 1988 declared the sale invalid under Section 9 of the Act and imposed a fine of Rs.80/- on respondent No.2 and directed that possession of land be restored to the second respondent.

#. Feeling aggrieved by the said order of the Deputy Collector, the petitioners preferred revision application before the Special Secretary (Appeals). The petitioners were heard by the learned Additional Chief Secretary (Appeals). However, the revision was dismissed by his order dated 28th November, 1988.

#. Feeling aggrieved by the said order of the learned Additional Chief Secretary (Appeals), the petitioners have preferred this petition under Article 227 of the Constitution of India. It has been mainly contended here that purchase was made in the year 1978 and the proceedings were started in 1988. It is further contended that the purchase was made on payment of full consideration and the land was put to use by constructing residential house on the said land. That these aspects have been ignored by the aforesaid officers and

therefore, their judgments and orders are illegal and erroneous. The petitioners have therefore prayed before this Court for issuance of appropriate write, order or direction for quashing and setting aside the aforesaid orders of the Deputy Collector as well as of the State Government.

#. On the receipt of the aforesaid petition, notice was issued to the respondents at the first instance and thereafter, the petition was admitted and interim relief was granted against dispossession of the petitioners from the said land.

#. The learned AGP has appeared for the State and has defended the case of the respondents. However, no affidavit had been filed and no reply had been submitted on behalf of the respondent for almost 10 years. The respondents have, at this stage, filed affidavit of Deputy Collector Shri B. H. Pathak on 23rd June, 2000 and the same has been considered by me for the purpose of deciding this petition.

#. I have heard Mr. J. M. Patel, learned advocate for the petitioners and learned AGP for the State. I have also perused the papers on record.

##. It is not much in dispute that the petitioners purchased the aforesaid land by registered sale deed dated 20th May, 1978. A copy of the said sale deed has been produced at Annexure-A.

##. It is noted that it is also not much disputed that the Deputy Collector, Chhota Udepur initiated the proceedings against the petitioners in 1988. The order of the Deputy Collector has been placed at page 14 of the petition. Upon perusal of the same, it can be gathered that it has been held that the petitioners have purchased the said land in violation of provisions of the said Act. It is also not in much dispute that the land purchased by the petitioners was fragment within the meaning of the said Act. It is also not much in dispute that the sale or purchase of such fragment is impermissible and was not permitted at the relevant point of time.

##. The contention of the appellant was very consistent that the authorities have initiated the proceedings after 10 years and that position has been changed and they have constructed the residential house on the said land quite long back. Therefore, it has been consistently contended that the proceedings could not have been undertaken after long lapse of time.

##. The learned AGP submits that the facts are not true and there is nothing on record to show that the petitioners have constructed the residential houses on the said land.

##. The aforesaid assertion does not have any force or substance. Firstly, the petitioners have stated in para 2 of the petition that after the purchase of the said land, they have constructed the residential structure in the said land since the year 1978. If the judgment and order of the learned Additional Chief Secretary (Appeals) are taken into consideration, in para-2 of the said judgment, it has been observed that the petitioners have contended before him that they have constructed their residential houses on a part of the said land and the remaining part of the said land has been put to agricultural operation by receiving water from adjoining land. This shows that it was the case of the petitioners right from the beginning that they have constructed residential house on the said land. The judgment was pronounced on 28th November, 1988, which shows that in 1988, the residence was there as per the case of the petitioners.

##. The respondents have all agencies right upto grass root level to find out the contention and stand taken by the petitioners and file affidavit to show that Talati or Mamlatdar or the Deputy Collector has visited the disputed land and the residence said to have been constructed by the petitioners as alleged by them was nowhere noticed on the spot. No such affidavit is forthcoming.

##. In absence of any affidavit or material on record, it has to be accepted that the petitioners have constructed residential house on the said land much before 1988.

##. This makes it clear that the land was purchased in 1978 and the residential structure was constructed thereon as well as the arrangement for irrigation has also been made and thereby, the land in question has been improved after purchase. The land was purchased by document dated 20th May, 1978 and the proceedings had been initiated in 1988. On this aspect of the case, the learned advocate Mr. Patel for the petitioners has relied upon a decision of this High Court reported in 1984 (2) GLR 1125 delivered in case of RANCHHODBHAI LALUBHAI PATEL VS. STATE OF GUJARAT. In the case cited before me, the proceedings were initiated 7 years after purchase of the

fragment. There it has been laid down that the proceedings for quashing and setting aside such transaction would not be undertaken after long lapse of time. In the said decision, this Court has also considered the earlier decision of the Hon'ble Apex Court reported in MANSARAM VS. S.P.PATHAK AND OTHERS rendered in Civil Application No.1262 (M) of 1978 and there also, the Apex Court has referred the previous decision of STATE OF GUJARAT VS. PATEL RAGHAVNATHA AND OTHER (1970)(1) SCR 335.

##. In above view of the matter, it is quite clear that the proceedings to quash such transaction have to be undertaken very promptly. At least, such proceedings should be undertaken within reasonable time and if that is not done, and if such action is taken after long lapse of time, then it would change the circumstances as has been seen in the present case. In the case on hand, the land has been improved and developed by the petitioners after its purchase on one hand and on the other hand, irrigation facility was availed as well as the residential structure has been constructed on the said land. Therefore, considering the improvement made in the said land and looking to the lapse of time on the part of the authority concerned, it is very clear that the facts of this case are *peri materia* with the facts of the above cited case.

##. In above view of the matter and considering the aforesaid decision of this court relying upon the previous decisions of the Hon'ble Apex Court, I am of the view that in the instant case, the proceedings could not have been taken against the petitioners after long lapse of time in the year 1988 meaning thereby, 10 years after such transaction whereas the land was purchased in the year 1978.

##. Therefore, considering the aforesaid aspects of the case, action taken by the Deputy Collector and confirmed by the learned Additional Chief Secretary (Appeals), Revenue Department as aforesaid, are illegal and require to be quashed and set aside.

##. In above view of the matter, the petitioners succeed in the present petition and therefore, the petition is required to be allowed. The petition is accordingly allowed and the orders passed by the Deputy Collector, Chhota Udepur dated 15-7-1988 and the order passed by the learned Additional Chief Secretary (Appeals), Revenue Department, Government of Gujarat dated 28th November, 1988 affirming the judgment and order of the Deputy

Collector are quashed and set aside.

##. The respondents are ordered to be prevented from implementing the said orders. The respondents are further prevented from dispossessing the petitioners from the land in question on the strength of the said two orders. Rule is made absolute to the extent indicated above.

##. Considering the facts and circumstances of the case, there shall be no order as to costs.

Date : 30/6/2000 [D. P. Buch, J.]

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