

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8247 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

=====

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

@

MANSUKHLAL D SHAH

Versus

AMRATLAL H MEHTA

-----  
Appearance:

1. Special Civil Application No. 8247 of 1992  
MR AJ PATEL for Petitioner No. 1-4  
MR SURESH M SHAH for Petitioner No. 1,2,3,4  
MR MEHUL S SHAH for Petitioner No. 1,2,3,4  
MR PM THAKKAR for Respondent No. 1-3  
RULE SERVED for Respondent No. 4-5  
MS.D.S.PANDIT, AGP for Respondent No. 6-7
- 

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 29/06/2002

ORAL JUDGEMENT

1. This Special Civil Application under Article 227 of the Constitution of India has been filed challenging the order Annexure-C dated 30-3-1998 passed by Respondent

No.6 (Dy. Collector, Anjar), setting aside the order No: Land/Vashi/3684/82 dated 13-12-1982, also directing the refund of the conversion charges recovered in respect of the disputed land. And, the order passed by Respondent No. 7 (Dy. Secretary (Appeals) Revenue Department, State of Gujarat) in Revision Application No. SSRD/Land/Jytch/9/89 dated 15-2-1992, whereby the revision application filed by the present petitioner came to be rejected, and also setting aside the order dated 13-12-1982, confirming the order dated 30-3-1998 passed by Respondent No. 6; also directing the confiscation of the disputed land to the Government.

2. The facts leading to filing of the present petition shortly stated are that the land bearing Survey No. 668 (new), (No. 298 old) admeasuring 5 Acre 32 Gunthas situated in the Sim of town Anjar in Kutch at Bhuj was a new tenure land in the year 1970, and the same came to be sold by Petitioner No.3 (Amrutlal Hirjibhai Pandya) on 5-1-1983 as old tenure land in favour of the present petitioner No.1, after getting the said land converted in 1982 from new tenure to old tenure land. Said conversion took place vide order dated 13-12-1982 on payment of necessary conversion charges; that, at the relevant time the vendor - present petitioner No.3 had the possession for more than 12 years. Thereafter, present respondent No. 1 to 3 (Mr. Amrutlal Hemchand Mehta, Kanji Khimji Baldamia and Thakar Shamji Anandji Jivan) filed Sankalan Appeal No. 10 of 1986 before Respondent No. 6 challenging grant of the permission /conversion of said from new tenure to old tenure. Said appeal came to be decided by respondent No. 6 vide order dated 30-3-1988 (Annexure-C). By the said order in appeal, respondent No.6 set aside the order dated 13-12-1982 whereby the land in question was permitted to be converted from new tenure land to old tenure land, also directing the refund of the conversion charges to the party concerned.

3. Thereafter, present petitioner No.1 challenged the order dated 30-3-1988 passed by respondent No.6 by way of Revision Application No. SSRD/Land/Kutch/9/89 before the Dy.Secretary, Revenue Department, State of Gujarat. Vide order dated 15-2-1990 (Annexure-D) Dy. Secretary, Revenue Department, State of Gujarat dismissed the revision application confirming the order(Annexure-C) passed by respondent No.6, and also observed that the land be confiscated to the Government, holding that the sale in favour of present petitioner No.1 by petitioner No. 3 is illegal, in as much as the said sale was without permission.

4. It has been submitted by Mr. A.J. Patel, learned senior counsel for the petitioner that the petitioner applied for change of use of the land, namely from agricultural use to non agricultural use somewhere in 1982-83; that as far as the State is concerned the order Annexure-C granting conversion of land from new tenure land to old tenure land has not been challenged by the Government. Same was challenged by respondent No. 1 to 3, who were not party to the transaction between petitioner No.1 and petitioner No.3. It is further submitted that, as far as the land in question is concerned the order granting conversion from new tenure to old tenure vide order dated 13-12-1985 could not have been cancelled by the order Annexure-C; that, as far as the confiscation of the land in question to the Government is concerned, the same could not have been passed, though the revision may be decided one way or the other. Even rejection of the revision petition by respondent No.7, would not necessitate the order/observation as regards confiscation of the land in question to the Government. By taking view against petitioner No.1 by rejecting the review petition the land would at the most revert back as the new tenure land and would continue as the new tenure land and nothing beyond. It is further submitted that, before ordering/observing the confiscation of the land in question to the Government no show cause notice was issued to petitioner no.1 and there was no opportunity to petitioner no.1 to contend as to why the land should be confiscated to the Government.

5. It is not disputed that in the year 1970 the land in question was a new tenure land held by petitioner No.3. It is also not disputed by learned AGP Ms. D.S. Pandit that the said land in the year 1982 came to be converted from new tenure land to old tenure land, after necessary conversion charges were paid, and the order granting conversion has been implemented by sale of land as old tenure land to petitioner No.1. It is also not in dispute that in the year 1983 the said land came to be sold by petitioner No.3 to petitioner No.1 as an old tenure land. It is also not contended by learned AGP that any show cause notice was issued to petitioner No.1 before ordering/observing the confiscation of the land in question to the Government vide order Annexure-D.

6. Today, in course of the hearing, original respondents No. 1, 2 and 3, who had filed Sankalan Appeal No. 10 of 1986 wherein order at Annexure-C came to be passed and the present petitioner No.1 have filed

consent terms. Filing of the consent terms is noted, as the said consent terms forms part of the record and nothing beyond.

7. It may be appreciated that the order dated 13-12-1982 whereby the conversion from new tenure to old tenure was granted in year 1982 has not been challenged by the State Government. As pointed out earlier Sankalan Appeal No. 10 of 1986 was preferred by respondent No. 1 to 3 who are not party to the transaction between petitioner No. 1 and 3 which took place in the year 1983. It may also be appreciated that the District Collector, Kutch, has not exercised suo motu revisional power under section 211 of the land Revenue Code, taking the issue of grant of conversion of the land from new tenure to old tenure in review at any point of time and the matter rests there as far as the grant of conversion from new tenure to old tenure is concerned.

8. Reliance has been placed on the decision in case of GOVINDSINGH RAMSINGHBHAI VAGHELA V. G. SUBBARAO, ASSTT. COLLECTOR DHOLKA AND OTHERS, reported in 11 G.L.R. pg. 897 (D.B.). The case before the Division Bench pertained to the provisions contained in Section 9, 27 Clause (b), 31 of the Prevention of Fragmentation and Consolidation of Holdings Act (LXII of 1947), wherein the Division Bench held that if the show cause notice was issued under section 9 and read with section 31, while the impugned orders were based on contravention of Clause (b) of Section 27, the impugned order based as they were on a ground in relation to which no opportunity to show cause was given by Assistant Collector must be held to be null & void.

In the instant case admittedly no show cause notice at all has been given before observing/ordering confiscation of the land in question to the Government vide Annexure-D. Thus the order/ observation as regards confiscation of the land to the Government has been without affording an opportunity of being heard to petitioner No.1. In my opinion, Dy. Secretary, Revenue Department, State of Gujarat could not have directed confiscation of the land to the Government as the order /observation of confiscation was passed without giving an opportunity of being heard to the petitioner No.1, and it was necessary for the authority to first issue notice to show cause to petitioner No.1, requiring him to show as what the petitioners have to say as regards the intended confiscation of land in question to the Government. This would suffice as regards the order/ observation relating to the confiscation of the land in question to the

Government vide Annexure-D.

9. As pointed out above, pursuant to the order dated 13-12-1982, permitting conversion of land from new tenure to old tenure land, necessary conversion charges were paid and thereafter the land in question was treated as old tenure land and subsequent thereto the transaction of sale came to be effected in favour of petitioner No. 1, by petitioner No.3. Order dated 13-12-1982 has not been questioned by the State Government or the Collector, Kutch. As observed above the Sankalan Appeal No. 10 of 1986 was filed by respondent No.1 to 3 who are not parties to the conversion of land from new tenure to old tenure and also not parties to the sale transaction between petitioner No. 3 and petitioner No.1 and that too the said appeal came to be filed after three years of the transaction of sale relating to the land in question. Under the circumstances the observation/ order directing confiscation of land in question to Government vide order Annexure-C needs to be set aside. That is all as far as confiscation of land to the Government is concerned.

10. Thus the above discussion would reveal that the order Annexure-C dated 30-3-1988 passed by respondent No. 6 in Sankalan Appeal No. 10 of 1986 cancelling the order dated 13-12-1982 whereby the conversion of land from new tenure to old tenure was granted cannot be sustained in law for the reasons aforesaid. Further the order Annexure-D in Revision Application No. : SSRD/ Land/ Kutch/ 9/ 89 dated 15-2-1992 passed by Dy. Secretary (Appeals) Revenue Department, State of Gujarat, cannot be sustained as the Government/ respondent No. 6 did not question the order dated 13-1-1982 whereby conversion of the land was granted and the order confiscating the land to the Government was without any notice to showcause to the petitioner No.1, and thereby not adhering to the principle of audi alterem partem which is a must before passing any order against a person who is likely to be adversely affected by such order.

11. I, therefore, make the rule absolute and issue writ of certiorari and set aside/quash the order dated 30-3-1988 passed in Sankalan Appeal No. 10 of 1986 (Annexure-C) passed by Collector, Kutch and the order passed by Dy. Secretary (Revenue) State of Gujarat dated 15-2-1992 passed in Revision Application No. SSRD/Land/Kutch/9/89; and restore the order dated 13-12-1982 passed in Application No. Land/Vashi/3684/82.

12. It is clarified that, this order will not come in the way of the State Government to question/challenge the

order dated 13-12-1982 whereby the land in question was permitted to be converted from new tenure land to old tenure land, if so desired. No order as to costs.

Dt: 29-6-2002

( N.G. Nandi, J )

/vgn