

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1990 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
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 concerned : NO  
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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ABUBHAI PARUBHAI

Versus

COMPETENT AUTHORITY & DEPUTY COLLECTOR

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Appearance:

1. Special Civil Application No. 1990 of 1989  
MR GM AMIN for Petitioner No. 1-4  
MR MA BUKHARI, AGP for Respondent No. 1
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CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 31/01/2003

ORAL JUDGEMENT

This petition is filed against the order passed  
by the Urban Land Tribunal and ex-officio Secretary to

the Government in Appeal No.462 of 1988, modifying the order passed by the competent authority to the extent that the excess vacant land would be 9034 sq.mts instead of 14,734 sq.mts.

2) It is the case of the petitioners that the petitioners were holding land bearing Survey No.36 admeasuring 15,682 Sq.mts. of land situated in the sim of village Kotarpur, Taluka City, District Ahmedabad and the said village was put under Urban Agglomeration, and therefore, the land of the said village was included under the Urban Land (Ceiling and Regulations) Act, 1976. The petitioners state that they had filled up Form No.1 as prescribed under Section 6 (i) on 25th February, 1978 and the same form came up for scrutiny before the respondent and the respondent after hearing the petitioner passed an order on 16th July, 1987 and in the said order the respondent has observed that the petitioners' land admeasuring 4,717 sq.mts. was acquired for the purpose of National High-way and the possession of the said land was taken by the Executive Engineer, Roads and Buildings and award was declared by the Special Land Acquisition Officer by Land Acquisition Case No.14 of 1980 and it was further observed in the said order that there are only four petitioners, they are entitled for four units only and hence the remaining land of the petitioners admeasuring 6,965 sq.mts. was held to be excess land.

3) It is further stated in the petition that the petitioners being aggrieved by and dissatisfied with the judgement and order dated 16th July, 1987 passed by the respondent, had preferred an appeal before the Urban Land Tribunal, Ahmedabad and the said Appeal was registered as APL/UL/Ahmedabad-462 of 1988 and the said appeal was decided by the Tribunal on 29th November, 1988 and in the said appeal Tribunal has reversed the judgement and order passed by the respondent and it was held that the petitioners are entitled to only one unit.

4) It is this order of the Tribunal which is under challenge before this Court.

5) The petition was admitted by this Court on 23-3-1989 and ad-interim relief was granted, staying the operation of the order passed by the Urban Land Tribunal. The said ad-interim order was confirmed on 16-4-1991 and this Court has granted the interim relief to the effect that till final disposal of the petition both the sides were directed to maintain status quo. The petitioner were also directed not to transfer, sale, mortgage, let

or in any other manner part with the land in question to anyone. The petitioners were further directed not to induct any lessor nor to create any encumbrance. The petitioner was also directed to file an undertaking to that effect.

6) Despite service of rule nobody appears on behalf of the respondent authorities. This Court has, therefore, passed an order on 22nd January, 2003 and directed Mr.Uday Bhatt the learned Assistant Government Pleader, who was present in the Court to file an affidavit-in-reply in this behalf and seek necessary instructions in the matter. However, till this date no affidavit is filed and no information is given to the Court with regard to the exact position and status of the land in question.

7) Mr.G.M.Amin appearing for the petitioner submits that the petitioners had preferred an appeal before the Tribunal for getting seven units instead of four units granted by the competent authority. The Tribunal either can dismiss the appeal and confirm the order of the respondent by holding that the petitioners were entitled to four units only or the Tribunal ought to have allowed the appeal by granting seven units to the petitioners. In the instant case the Tribunal has exceeded its jurisdiction and held that the petitioner are entitled to only one unit and that has resulted into miscarriage of justice, and therefore, the order passed by the Tribunal deserves to be quashed and set aside.

8) Mr.G.M.Amin learned advocate appearing for the petitioner further submits that the possession of the land in question is with the petitioners and that Urban Land Ceiling Act is abolished by the Urban Land (Ceiling & Regulation) Repeal Act, 1999, and hence the orders passed by the authorities could not be sustained. He has relied on the provisions contained in Section 10 (3) of the Repealed Act and submitted that the land is not vested in the Government as contemplated in sub section 3 of Section 10 of the said Act as the possession was not taken by the Government and it is still with the petitioner.

9) Mr.Bukhari, learned Assistant Government Pleader who is present in the Court is not in a position to controvert this statement.

10) In view of the above facts and in view of the repealed Act, I am of the view that the order passed by the respondent authority does not survive as the

possession of the disputed land is still with the petitioners. In view of these facts the order passed by the Tribunal is hereby quashed and set aside.

11) It is, however, open to the respondent authorities to move appropriate application before this Court if there is any dispute with regard to the possession by placing document in support of their claim.

12) Subject to the above observations, this petition is disposed of accordingly. Rule made absolute to the aforesaid extent with no order as to costs.

(K.A.Puj, J.)

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