

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1838 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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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 concerned :
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MARIAMBIBI BABUBHAI

Versus

SURAT MUNICIPAL CORPN

Appearance:

1. Special Civil Application No. 1838 of 1988
- MR DD Vyas for Petitioner No. 1-4.
Mr. PG Desai for Respondent No. 1-2.
NOTICE SERVED FOR Respondent No. 1-2

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 31/01/2003

ORAL JUDGEMENT

The petitioners, in this petition, have challenged the notice dated 18.3.1988 (Annexure B) whereby the permission to construct the building granted earlier was cancelled and the petitioners were asked to maintain status-quo failing which necessary actions will be taken. It was stated in the said notice that at the time when the application of the petitioners were taken into consideration for granting permission it was not known to the Corporation that the land was already acquired. The respondent No.2 has passed the order while exercising his power under Section 258 and cancelled the

order granting permission to construct. The petitioners had raised several contentions while challenging the said action of the respondent No.1. The petitioners submitted in this behalf that under Section 258 power has been given to the Commissioner and that too, when he is satisfied that the permission was granted in consequence of any material misrepresentation or fraudulent statement contained in the notice given or information furnished under Section 253 or 254 or of further information if any furnished. It was further stated that the respondent No.2 has no power or authority to cancel the permission under Section 258. The said power is conferred on the Commissioner. The petitioners have further stated that the order regarding cancellation of permission was passed without giving any opportunity of being heard to the petitioners. For this purpose, the petitioners have relied on the decision of this Court in the case of *Hasmukhbhai Dhanjibhai Zaveri v. R. Parthasarthy* - 12 GLR 128, wherein it is held that "the power conferred upon the Commissioner under Section 258 of Bombay Provinciall Municipal Corporations Act is a quasi-judicial power and before cancelling a permission in exercise of the power conferred upon him under the said section the Municipal Commissioner should consider the question arising before him in a judicial spirit. In exercising the power, the Municipal Commissioner must act justly and fairly and not arbitrarily or capriciously; and must exercise the power in consonance with principles of natural justice, and indicated the minimum compliance with the principles of natural justice that is required of the Municipal Commissioner before taking action under the section." Admittedly, in the present case, before passing of the impugned order, no opportunity is given to the petitioners before cancelling the permsision. Mr. PG Desai, learned advocate appearing for the respondent is also not in a position to controvert the said facts.

2. Having heard the learned Advocates representing their respective parties, I am of the view that the impugned order is contrary to the principles of natural justice and it is in violation of the principles laid down by this Court in the aforesaid judgment. Apart from this, the acquisition proceedings are already initiated in respect of the land in question and though order is passed during pendency of the proceedings he possession is still not given. In any view of the matter, the impugned order is passed in violation of the principles of natural justice and therefore I quash and set aside the impugned order and direct the respondent authorities to give proper opportunity of being heard to the petitioners and pass appropriate order after considering

the submissions and/or contentions which may be advanced by the petitioners against the action of cancelling the permission while exercising the powers under Section 258 of the Act.

3. With the above observations, this petition is accordingly disposed of. Rule is made absolute to the above extent with no order as to costs.

rmr. [K.A. Puj, J.]